

Appl. No. 09/222,340
Amdt. Dated June 9, 2005
Reply to final Office action of April 13, 2005

REMARKS/ARGUMENTS

Claims 1-14 and 16-26 are pending in the present application.

This Amendment is in response to the Final Office Action mailed April 13, 2005. In the final Office Action, claims 1-14, 16-25 were rejected under 35 U.S.C. §103(a). Reconsideration in light of the remarks made herein is respectfully requested.

Rejection Under 35 U.S.C. § 103

The Final Office Action rejected claims 1-14 and 16-26 under 35 U.S.C. §103(a).

Applicants respectfully traverse the rejections and contend that the Examiner has not met the burden of establishing a *prima facie* case of obviousness for each rejection. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *MPEP* §2143, p. 2100-129 (8th Ed., Rev. 2, May 2004). As analyzed below, none of the rejections meets any of the three basic criteria.

1. The Final Office Action rejected claims 1-4, 7-11, 13, 14, 17, 18, 20, 21, 24, and 25 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,341,130 issued to Lakshman et al. ("Lakshman") in view of Barzilai et al. ("Barzilai") "Design and Implementation of an RSVP-Based Quality of Service Architecture for an Integrated Services Internet", 1998. and in further view of the article "DPF: Fast Flexible Demultiplexing using Dynamic Code Generation, written by Engler et al. ("Engler").

Applicants reiterate the arguments set forth in the previously filed Response to the Office Action. Lakshman discloses a packet classification method and apparatus employing two fields and Barzilai discloses a design and implementation of an RSVP-based quality of service architecture for an integrated services internet, as discussed in the previous response.

Engler discloses a fast, flexible message demultiplexing using dynamic code generation. Dynamic code generation is the creation of executable code at run time (Engler, page 1, right

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column, lines 24-26). The technique exploits dynamic code generation in two ways: by using it to eliminate interpretation overhead by compiling packet filters into executable code, and by using filter constants to aggressively optimize this executable code (Engler, page 2, right column, section 3.1).

None of Lakshman, Barzilai, and Engler discloses, suggests, or renders obvious (1) a controller to dynamically create and remove the filters controlling access to the different service levels, and (2) satisfying filter criteria corresponding to an admission policy related to differentiated service levels. Therefore, there is no motivation to modify or combine Lakshman, Barzilai, and Engler as previously contended.

The Final Office Action states that Engler discloses dynamic filtering (Final Office Action, page 4, item 8). Applicants respectfully disagree. Engler merely discloses dynamically generating executable code for the filters, not dynamically creating and removing the filters based on an admission profile. The packet filters of Engler are fixed, and can be viewed as application code that is downloaded in to the kernel (Engler, page 5, right column, section 5). Since a kernel has to be always within the system and cannot be created or removed dynamically, the packet filters, being downloaded into the kernel, cannot be created or removed dynamically.

The Final Office Action further states that Barzalai provides motivation to combine by stating that the uses of dynamic code generation techniques that are applied provide for very efficient packet filtering (Final Office Action, page 4, item 9; page 14, item 44). Applicants respectfully disagree. As argued above, dynamic code generation is not the same as dynamically creating and removing the filters based on an admission profile. Dynamic code generation is a technique to delay compilation until the executable is already running. The code of the packet filter is dynamically compiled, not the filter being dynamically created and removed.

The Final Office Action fails to show a prima facie case of obviousness. "To defeat patentability based on obviousness, the suggestion...must come from prior art, not from the hindsight knowledge of the invention." Interconnect Planning Corp. v. Feil, 744 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Circ. 1985). Knowledge of applicant's disclosure must be put aside in reaching the obviousness determination. MPEP 2142. When the motivation to combine the teachings of the references is not immediately apparent, it is the duty of the Examiner to

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explain why the combination of the teachings is proper. Ex parte Skinner, 2 USPQ2d 1788 (Bd. Pat. App. & Inter. 1986). A statement of a rejection that includes a large number of rejections must explain with reasonable specificity at least one rejection, otherwise the Examiner procedurally fails to establish a prima facie case of obviousness. Ex parte Blanc, 13 USPQ2d 1383 (Bd. Pat. App. & Inter. 1989). The ultimate determination of patentability is based on the entire record, by a preponderance of evidence, with due consideration to the persuasiveness of any arguments and any secondary evidence. In re Octiker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or implicitly suggest the claimed invention or the Examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." Ex parte Clapp, 227 USPQ 972, 973. (Bd. Pat. App. & Inter. 1985). The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Furthermore, although a prior art device "may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so." In re Mills 916 F.2d at 682, 16 USPQ2d at 1432; In re Fitch, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992). When applying 35 U.S.C. 103, the following tenets of patent law must be adhered to: (A) The claimed invention must be considered as a whole; (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination; (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and (D) Reasonable expectation of success is the standard with which obviousness is determined. Hodosh v. Block Drug Co., Inc., 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986).

Here, none of Lakshman, Barzilai, and Engler suggests dynamically creating and removing filters. Barzilai merely refers to dynamic code generation to delay compilation of the code for the packet filters, not dynamically creating or removing the filters. Engler discloses dynamically generating executable code for the filter, not creating or removing the filters. Accordingly, there is no suggestion to combine the cited references. Thus, no prima facie case of obviousness has been established.

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2. The Final Office Action further rejected claims 5, 6, 16, 19, 22, and 23 under 35 U.S.C. §103(a) as being unpatentable over Lakshman in view of Barzilai as applied to claims 1, 13, 14, and 21, and further in view of U.S. Patent No. 6,651,101 issued to Gai et al. ("Gai").

As discussed previously, Gai discloses a local policy enforcer to determine the percentage of time that its processor has remained idle and its availability for storing policies (Gai, col. 12, lines 42-47). Since the processor belongs to a local policy enforcer, its memory cannot be a remote device. Gai, in effect, teaches away from the claimed invention by teaching storing policies in a local memory, not a remote device.

In response to Applicants' argument, the Final Office Action states that Gai further teaches that information may be obtained from a repository that is remote from the local enforcer, citing Gai, col. 15, lines 59-64 (Final Office Action, page 15, item 46). The cited portion is repeated below for ease of reference:

"...the policy server 216 may obtain information from the repository 218 and/or network administrator via end station 220 and, in response, formulate one or more traffic management rules, such as classification, behavioral or configuration rules." (Gai, col. 15, lines 59-64)

Applicants respectfully disagree. First, the policy server 216 merely examines the network parameters specified for the anticipated traffic flow, including the IP addresses, port numbers and transport protocol (Gai, col. 15, lines 49-52). These parameters are not equivalent to an admission policy related to differentiated service levels as recited in claim 1 from which claim 5 depend. Second, the repository 218 and the end station 220 are locally connected to the policy server 216 as shown in Figure 2 in Gai. They are not a communicatively coupled remote device in a network context.

In view of the above, there is no suggestion or motivation to combine Lakshman, Barzilai, and Gai. In addition, none of Lakshman, Barzilai, and Gai discloses or suggests the elements of the independent claims as argued above. Furthermore, since Gai effectively teaches away from the claimed invention, there is no suggestion to combine the cited references.

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3. The Final Office Action rejected claims 12 and 26 under 35 U.S.C. §103(a) as being unpatentable over Lakshman and Barzilai as applied to claims 1, 11, 21, 24 and 25 above and further in view of what was well known to the ordinary artisan in the networking art at the time the invention was made. The Final Office Action states that the Examiner takes Official Notice that a network administrator having the capability to remove filters based on an expiration day or time of day is well known in the networking art (Final Office Action, page 11, paragraph 37).

Applicants reiterate the previously filed argument and contend that the Examiner did not meet the burden of providing evidentiary showing first before taking official notice, as required by MPEP 2144.04B. The evidentiary showing must include a technical line of reasoning to show the official notice that controller dynamically removing a filter based on time of day is clear and unmistakable. The Examiner also failed to show that the network administrator is equivalent to the controller or the control means, recited in claims 12, 26, and having the characteristics as recited in claims 1 or 21.

The Final Office Action states that Wiegel clearly shows that this feature was notoriously well known in the prior art (Final Office Action, page 15, item 47). However, the Examiner did not provide the source for Wiegel. Furthermore, even though "time-of-day" is a feature well known in the prior art, this is not claimed in isolation. Claims 12 and 26 recite the controller or control means removes at least one of the filters based on time-of-day. The Examiner has not shown that Wiegel or Official Notice suggests: (1) the controller or control means, and (2) removes at least one of the filters.

4. The Final Office Action rejected claims 1-14 and 16-26 under 35 U.S.C. §103(a) as being unpatentable over Lakshman in view of U.S. Patent No. 6,209,101 issued to Mitchem et al. ("Mitchem").

Lakshman discloses a packet classification method and apparatus employing two fields as discussed above.

Mitchem discloses adaptive security system having hierarchy of security servers. The technique provides for the dynamic creation and termination of security servers in order to adapt to organizational policy changes (Mitchem, col. 2, lines 39-41, col. 4, lines 39-41). Each security server executes in a common security domain. In order to create a new security server,

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the creating task spawns a new thread of execution and commands kernel to execute the spawned thread in the security domain common to the other security servers (Mitchem, col. 4, lines 56-60). To terminate security servers, the task issues a proper command to the kernel, such as a task delete command (Mitchem, col. 5, lines 30-33).

Lakshman and Mitchem, taken alone or in any combination, does not disclose, suggest, or render obvious a controller to dynamically create and remove the filters controlling access to the different service levels.

As discussed above, Lakshman does not disclose admission policy, differentiated service levels, and dynamic creation and removal of filters based on an admission profile. Mitchem merely discloses dynamic creation and termination of security servers, not packet filters. A security server is a task that is executed and managed by a kernel (Mitchem, col. 4, lines 17-20). Since it is a task running within an operating system, it is not equivalent to a packet filter that is located at a network interface to filter packet data. A task in an operating system kernel cannot receive and/or filter packet data in a network. Furthermore, the security policies are not the same the admission policy. The security policies here refer to controlling access to computing resources (Mitchem, col. 3, lines 6-8). In contrast, admission policy refers to differentiated services in a data network.

The Final Office Action does not respond to the above argument.

Where a claim is refused for any reason relating to the merits thereof it should be "rejected" and the ground of rejection fully and clearly stated. See MPEP 707.07(d). Where the applicant traverses an objection, the Examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it. See MPEP 707.07(f). An omnibus rejection of the claim "on the reference and for reasons of record" is stereotyped and usually not informative and should therefore be avoided. See MPEP 707.07(d). It is important for an examiner to properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be given fair opportunity to reply. See MPEP 706.02(j).

The Examiner should set forth in the Office Action the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate. See MPEP 706.02(j). The goal of examination is to clearly articulate any rejection early in the prosecution process so that the applicant has the opportunity

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to provide evidence of a patentability and otherwise reply completely at the earliest opportunity.
See MPEP 706.

The Examiner repeated the rejection without taking note of the Applicants' arguments and without answering the substance of Applicants' arguments as presented in the previously filed response. The MPEP requires that the Examiner's action will be complete as to all matters. 37 CFR 1.104; MPEP 707.07. Since the Examiner's action in the Office Action is incomplete in that there is no answer to the substance of Applicants' arguments previously presented, the rejections have been improperly made.

Applicants submit that independent claims 1, 13, 21 and their respective dependent claims are distinguishable over the cited prior art references. Accordingly, Applicants respectfully request the rejections under 35 U.S.C. §103(a) be withdrawn.

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Conclusion

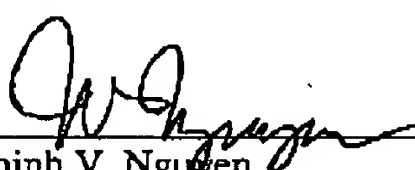
Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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Dated: June 9, 2005

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